COPY

72-1

Supreme Court, U. S.
FILED
JUN 29 1972
MICHAEL RODAK, JR., CLERK

in the

Supreme Court

of the

United States

OCTOBER TERM 1971

NO. _____

LEONARD D. BASKIN and MEYER A. BASKIN,
as Officers and Directors of
7450 Operating Company,

Petitioners,

vs.

CITY OF MIAMI BEACH,
a Florida Municipal Corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

Leonard D. Baskin
1642 Alfred I. duPont Building
Miami, Florida 33131
Attorney for Petitioners.

INDEX TO PETITION

	Page
OPINIONS BELOW	2
JURISDICTION	3
QUESTION PRESENTED	3
CONSTITUTIONAL STATUTORY AND RULE PROVISIONS PROVIDED	4, 5
STATEMENT OF THE CASE	5, 6
HOW THE FEDERAL QUESTION WAS RAISED	7, 8
REASONS FOR GRANTING THE WRIT	9-13
CONCLUSION AND APPEARANCE OF COUNSEL	14
CERTIFICATE OF SERVICE	15

INDEX TO APPENDIX

	Page
Appendix A — Trial Docket Case No. 143913 (Leonard D. Baskin)	1-3
Appendix B — Trial Docket Case No. 143914 (Meyer Albert Baskin)	5-7
Appendix C — Motion To Disqualify (Leonard D. Baskin)	9-11
Appendix D — Motion To Disqualify (Meyer A. Baskin)	11-13
Appendix E — Motion To Dismiss (Leonard D. Baskin)	14-18
Appendix F — Motion To Dismiss (Meyer A. Baskin)	19
Appendix G — Excerpt From Transcript Of Testimony, pages 35, 36 & 46	19
Appendix H — Excerpt From Transcript of Proceedings, pages 2, 3 & 4	20-22
Appendix I — Motion For New Trial	22-23
Appendix J — Order On Post Trial Motions	24-25
Appendix K — Assignments Of Error	25-27
Appendix L — Order Affirming Judgment	27-28

INDEX TO APPENDIX (cont.)

	Page
Appendix M — Petition For Rehearing	29-30
Appendix N — Amended Petition For Rehearing	30-31
Appendix O — Order Denying Amended Petition For Rehearing	31-32
Appendix P — Petition For Writ Of Certiorari	33-35
Appendix Q — Motion To Stay Proceedings	35-36
Appendix R — Order Denying Stay of Proceedings	37-38
Appendix S — Order Denying Petition for Certiorari	38-39
Appendix T — Petition For Rehearing	39-40
Appendix U — Order Denying Rehearing And Granting Stay	41-42

TABLE OF AUTHORITIES

Case	Page
Chapman v. California, 386 U.S. 18 (1967)	13
Gorham v. Robinson, 186 A. 832, dissent at 869, ¶2 (R.I. 1936)	13
Miami Beach v. Benhow Realty, 168 F.2d 378 (1940)	13
Munroeville v. Ward, 271 N.E.2d 757 (Ohio 1971), Cert. granted U.S. Sup. Ct., Jan. 24, 1972, 30 Law Week 3351	8, 10, 11
Sweezy v. New Hampshire, 354 U.S. 234 (1957)	12
Tumey v. Ohio, 273 U.S. 510 (1927)	12

CONSTITUTIONS, STATUTES AND RULES

Constitution of the United States, Amend. XIV, Sec. 1	4, 7, 8
Rules of the United States Supreme Court, Rule 19 (1) (a)	5
Title 28 U.S. Code, Sec. 1257 (3)	4

TABLE OF AUTHORITIES (cont.)

OTHER

	Page
Charter of City of Miami Beach, Sec. 8	5, 9
City of Miami Beach Code, Sec. 14-73	5
Federalist Paper No. 47	11
Federalist Paper No. 78	10

in the
Supreme Court
of the
United States

OCTOBER TERM 1971

NO. _____

LEONARD D. BASKIN and MEYER A. BASKIN,
as Officers and Directors of
7450 Operating Company,

Petitioners,

vs.

CITY OF MIAMI BEACH,
a Florida Municipal Corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

Petitioners pray that a Writ Of Certiorari issue to review the Order Affirming Judgment of the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, filed January 17, 1972 and the Order denying Amended Petition For Rehearing filed February 11, 1972.

OPINIONS BELOW

Judgments of the Municipal Court in and for the City of Miami Beach, in and for Dade County, Florida, were entered and filed on January 28, 1971. Separate Judgment and sentence was rendered against each Petitioner, Trial Docket Case No.'s 143913 and 914 respectively, in that each Petitioner was individually charged and brought to Trial. (App. A and B). The individual cases were consolidated by the Court at Trial for all purposes naming the individual Petitioners as Officers and Directors.

The Order Affirming Judgment of the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, was filed January 17, 1972 (App. L) and recorded at O. R. Book 7524, Page 250. Rehearing was denied on February 11, 1972. The Order Denying Rehearing is recorded at O. R. Book 7566, Page 29. (App. O). The Order of Affirmance is unreported.

The Order of the District Court of Appeal of Florida, Third District, denying Petition for Writ Of Certiorari to review the Order of the Circuit Court was entered and filed May 10, 1972. (App. S). It is recorded in Minute Book 45, Page 80. Rehearing was denied and a 30-day stay granted on May 30, 1972 and recorded at Minute Book 45, Page 164. (App. U). The Order denying Certiorari is not yet reported.

JURISDICTION

The Order Affirming Judgment of the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, filed January 18, 1972, became final upon denial of Petition For Rehearing on February 11, 1972. (App. L & O)

Timely Petition For Certiorari was filed in the District Court of Appeal of Florida, Third District, and denied May 10, 1972. (App. S). The Order denying Rehearing was entered May 30, 1972. (App. U).

The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3). Jurisdiction is also invoked under Rule 19 (1) (a) of the Revised Rules of the Supreme Court of the United States, adopted June 15, 1970, effective July 1, 1970.

QUESTION PRESENTED

WHETHER DEFENDANTS CHALLENGING CONSTITUTIONALITY OF A CITY ORDINANCE ARE DENIED DUE PROCESS OF LAW IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION WHEN THEY ARE COMPELLED TO STAND TRIAL BEFORE A MUNICIPAL JUDGE WHO IS PREVENTED FROM ACTING AS A DISINTERESTED AND IMPARTIAL JUDICIAL OFFICER BY UNLIMITED LEGISLATIVE CONTROL OF HIS TERM OF OFFICE.

CONSTITUTIONAL, STATUTORY AND RULES PROVISIONS INVOLVED

CONSTITUTION OF THE UNITED STATES — AMENDMENT XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TITLE 28 UNITED STATES CODE — SECTION 1257(3)

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

RULES OF THE SUPREME COURT OF THE UNITED STATES — RULE 19 (1)(a)

> Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

CHARTER OF THE CITY OF MIAMI BEACH DADE COUNTY FLORIDA — SECTION 8.

> ***the Council shall appoint a City Manager, a City Attorney, a Municipal Judge and two Associate Municipal Judges who shall serve at the will of a majority of the Council***

STATEMENT OF THE CASE

Petitioners, LEONARD D. BASKIN and M. A. BASKIN, were jointly tried in the Municipal Court of Miami Beach, Florida, upon separate charges arising out of the same violation of the municipal fire code. Each was charged with failing to comply with the provisions of the Miami Beach Code Section 14-73 which adopted by reference the Metropolitan Dade County Minimum Standards Fire Prevention and Safety Code, specifically by failing to inclose an interior stairwall in the Broadmoor Hotel. The Broadmoor, an existing fireproof building, was owned and operated by 7450 Operating Co., a Florida corporation of which Petitioners were officers, directors and stockholders. (App. A & B).

Prior to and at trial Petitioners, by timely Motions and repeated attempts to offer testimony and factual proof, interposed two constitutional defenses to the charge, either one of which was an absolute bar to prosecution:

(a) they challenged the constitutionality of the Ordinance upon the grounds of vague content, unlawful delegation of legislative power and discriminatory enforcement;

(b) they challenged the qualifications of the Trial Judge to hear the cause for reason of self-interest since his term in office was subject to unlimited control of the City Council which had enacted the Ordinance.

Noncompliance being admitted, the Trial Judge, sitting without Jury, denied each and every Motion and refused to admit each and every offer of testimony predicated upon the constitutional defenses.

At the trial's close the Court held the Ordinance valid and found Petitioners guilty as charged sentencing each to pay a fine of $500.00 or sixty days. (App. A, B and H).

Post Trial Motions being denied, (App. J), Petitioners posted Bond of $750.00 each and appealed the conviction to the Circuit Court of the Eleventh Judicial Circuit which affirmed the Judgment of the Trial Court and denied Rehearing. (App. L and O)

Timely petition for Writ Of Certiorari, filed in the District Court of Appeal of Florida, Third District was denied. (App. S). Petition for Rehearing was denied May 30, 1972. (App. U).

HOW THE FEDERAL QUESTION WAS RAISED

Prior to trial, two identical Motions to Dismiss and two identical Motions to Disqualify were filed upon federal constitutional grounds: (App. C. D. E, & F).

A. The ordinance was so vague in content and discriminatory in enforcement as to deny due process and equal protection of the laws.

B. The Trial Judge could not sit as an impartial tribunal because he was subservient to the City Council's unlimited control over his term of office.

In accordance with the local rule, the Motions were heard and denied at trial.

Each and every attempt by Petitioners to raise these constitutional issues during the trial was likewise struck down by the Court. The Court stated for the record:

> *** "If you are trying to raise an objection to the constitutionality of this ordinance, you are wasting your time. *** I am not going to rule or declare on the constitutionality of this Code. I don't think that it is within the province of this Court to do so. *** (App. G).

The Motions were renewed in open Court before rendition of the verdict and similarly denied. (App. H).

Motion for new trial repeated the Motions to disqualify and to dismiss specifically citing the United States Constitution Amendment XIV. (App. I). It was also denied. (App. J).

The federal question was raised again in the Assignments Of Error on Appeal to the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, by direct reference to the Trial Court's error in denying the foregoing Motions to dismiss and disqualify and specific citation to denial of due process and equal protection of the law under the United States Constitution Amendment XIV. (App. K) The anomalous position of the Trial Judge, in adjudicating the constitutionality of a City Ordinance when he held his official position at the will of the City Council, was fully presented by brief and argument to the Circuit Court. The Court affirmed the judgment of the Trial Court without opinion except to find that Municipal Courts throughout the State had been duly and constitutionally authorized and that the City Fire Code was constitutional. (App. L). Petition for Rehearing as amended similarly raising the same two federal issues was likewise denied. (App. M, N, & O).

The same federal question, anomalous position of the Trial Judge, was raised in the Petition for Writ Of Certiorari filed in the District Court of Appeal of Florida, Third District. (App. P). Further, the District Court's attention was specifically directed to the obverse of the same question presently before this Court in **Munroeville v. Ward**, 271 N.E.2d 757 (Ohio 1971), Cert. granted U.S. S.Ct., Jan. 24, 1972, 40 Law Week 3351. See Motion to Stay Proceedings. (App. Q) Both Petition and Motion were denied (App. R & S) and Petition for Rehearing (App. T) raising the same issue was also denied. (App. U).

REASONS FOR GRANTING THE WRIT

Because the Trial Judge served at the will of the Legislature precluding his impartiality, Petitioners were denied due process of law in violation of the Fourteenth Amendment to the United States Constitution.

The record declares such denial with absolute and unmistakable clarity:

1. They were charged with violation of a City Ordinance —a legislative act;

2. Their sole defense was a constitutional challenge to the validity of that Ordinance;

3. They were compelled to stand trial before a Municipal Judge whose position was wholly subservient to the will of the City Council—the very same legislative body which had enacted that Ordinance.

The Charter of the City of Miami Beach, Section 8 provided, inter alia:

> " . . . the City Council shall appoint a City Manager, a City Attorney, a Municipal Judge and two Associate Municipal Judges who shall serve at the will of a majority of the Council . . . "

A judge under such provision can have no true will of his own. At best, the Legislature has an unlimited latent veto of his adjudications. At worst, his necessarily paramount interest in his job renders his judicial discretion no more than the "alter ego" of the Legislature.

The underlying principle shown by this record is exactly the same combining of governmental power, be it Legislative, Judicial or Executive, that is not only repugnant to, but absolutely destructive of, any concept of "due process" under the "American System of Limited Constitutional Government."

It is the very same accumulation of all powers which Justice Corrigan cited as the true central issue in his able dissent in **Munroeville v. Ward**, 271 N.E.2d 757 (Ohio 1971), at page 764:

> " . . . so the Mayor in this case actually possesses executive, legislative and judicial power.
>
> As aptly pointed out in Appellant's Brief:
>
> "The scrupulous concern in American Jurisprudence for the impartiality of its judges has its origins in two most venerated principles of government.
>
> "The maxim that no man ought to be Judge in his own cause . . .
>
> "The second principle generating concern for the avoidance of conflicts of interest on the part of the Judiciary was the doctrine of separation of powers, by which the framers of the Constitution endeavored to protect individual liberty by the distribution of power among the several branches of government. Thus, Hamilton declared in No. 78 of **The Federalist Papers**:
>
> " . . . the general liberty of the people can never be endangered from [the judiciary]; I mean so long as the judiciary remains truly distinct from both the legislative and the executive. For I

agree that "there is no liberty if the power of judging be not separated from the legislative and executive powers"[4],

ft.n.4. Quoting from Montesquieu, Spirit of Laws, Vol. 1, page 181."

This Court granted certiorari in the Munroeville case, January 24, 1972 and it is presently under review.

It is the same accumulation of power against which Madison warned in Federalist Paper No. 47:

" . . . the accumulation of all powers, Legislative, Executive and Judiciary, in the same hands, whether of one, a few, or many and whether hereditary, self appointed, or elected, may justly be pronounced the very definition of tyranny . . . "

and Hamilton in The Federalist Paper No. 78 reviewed at length specifically as to tenure:

" . . . and that as nothing can contribute so much to its [the Judiciary] firmness and independence as permanency in office, this quality may therefore be justly regarded as an indispensable ingredient in its Constitution, . . .

"The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; . . . limitations of this kind can be preserved in practice no other way than through the media of the courts of justice, whose duty it must be to declare all acts

> contrary to the manifest tenor of the constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing."

This Court has always refused to compromise on these basic principles affirming that every procedure offering a possible temptation to a Judge to forget the vital necessity of his impartiality is a denial of due process of law. **Tumey v. Ohio**, 273 U.S. 510 (1927).

Even though the concept of separation of powers per se has not been held to be a requirement of due process imposed upon the states by the Fourteenth Amendment, **Sweezy v. New Hampshire**, 354 U.S. 234 (1957), the resultant paramount interest of the Trial Judge in his official position with all its emoluments necessarily negates any possible supposition of his impartiality and renders his judgments void.

If the Trial Judge's interest in holding his job was not paramount how else to explain his statements on the record that no constitutional issues could be or would be heard in his Court; (App. G) or his implied suggestion that immediate compliance without appeal would suspend fine and sentence. (App. H)

The exact procedure for combining legislative and judicial power as reflected by the record here is of first impression before this Court. Diligent search reveals no reported decisions directly or indirectly bearing upon this particular combination in any court in the United States. However, the latent and insidious nature of this particular type of accumulation of legislative and judicial power

only adds to its virulence and multiplies its destructiveness to "due process."

The suggestion that a Judge could serve at the pleasure of the Legislature engendered instant denial and righteous indignation from Justice Capotosto's dissent in **Gorham v. Robinson,** 186 A. 832, at 869, ¶ 2 (R.I. 1936). The majority decision allowed legislative shortening of judges' terms of office, but Justice Capotosto rejected even this limited control, clearly and exhaustively revealing all its pitfalls and dangers to the "American System".

Even if Petitioners at trial had raised a sham constitutional challenge to the Ordinance, the right to an impartial Judge is so basic to a fair trial that its deprivation can never be treated as harmless error, **Chapman v. California** 386 U.S. 18 (1967). But the Ordinance in question was properly challenged as being an overly broad and vague delegation of legislative power to an administrative officer inducing arbitrary and discriminatory enforcement with resultant deprivation of individual and property rights without due process of law. **Miami Beach v. Benhow Realty,** 168 F.2d 378 (1940).

In summary, the error of the Florida courts, in failing to recognize the fettered and subservient position of a Trial Judge who serves at the will of a City Council, not only denied Petitioners a fair trial before an impartial tribunal but effectively denied the very existence of any concept of "constitutional rights and guarantees." The Florida Courts' error denies the existence of the Constitution and the courts themselves. It extends not only to the Petitioners, but to all persons in the State of Florida and by implication the United States unless reversed and corrected by this Court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that Petition for Writ Of Certiorari should be granted to review the Order Affirming Judgment of the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida.

Respectfully submitted,

Leonard D. Baskin
1642 Alfred I. duPont Building
Miami, Florida 33131
Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that three true copies of the foregoing Petition for Writ of Certiorari were delivered to JOSEPH WANICK, City Attorney for the City of Miami Beach, 1130 Washington Avenue, Miami Beach, Florida 33139, this 29th day of JUNE, 1972.

LEONARD D. BASKIN
Attorney for Petitioners

App. 1

IN THE MUNICIPAL COURT IN AND FOR THE CITY OF MIAMI BEACH, DADE COUNTY, FLORIDA — TRIAL DOCKET CASE — Nº 143913 APP. A

THE STATE OF FLORIDA,
COUNTY OF DADE,
CITY OF MIAMI BEACH,
PLAINTIFF,
vs.
BASKIN, Leonard
DEFENDANT

THE DEFENDANT Leonard BASKIN
DID ON THE 12th DAY OF October, A. D. 19 70,
AT AND IN THE CITY OF MIAMI BEACH, DADE COUNTY, FLORIDA, VIOLATE SECTION 14-73
OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, which adopted the Metropolitan Dade County Minimum Standards Fire Prevention and Safety Code and did then and there violate Section 37.04 of said Metropolitan Fire Code. TO WIT: by failure to enclose an interior stairway or to protect the floor openings of said stairway in a proper and safe manner in a building located at 7450 Ocean Terrace, Miami Beach, Dade County, Florida, known as the Broadmoor (Cont'd. on back)

C. 279338
BOND ORDERED RELEASED
____ day of ____ 19____
Municipal Judge
BOND $____
CASH $____
SURETY $____
Bondsman
SUMMONS XX to appear
"OR" ☐
AUTHORITY ____
FINE $____
COSTS $____
FORFEITURE $____
JAIL ☐ ☐
DISMISSED ☐ ☐
NOT GUILTY ☐ ☐
NOLLE PROSSE ☐ ☐
SUSPENDED ☐ ☐

COMPLAINANT ____ ARRESTED BY William Beatty, M.B. Fire Dept

DEFENDANT CALLED FOR TRIAL at ____ on the ____ day of ____, A.D. 19____ and not answering or appearing, IT IS THEREFORE ORDERED AND ADJUDGED that the Bond of said Defendant be and it is HEREBY FORFEITED.
DONE, ORDERED AND ADJUDGED IN OPEN COURT AT MIAMI BEACH, DADE COUNTY, FLORIDA, this ____ day of ____, A. D. 19____
ATTEST: RUTH B. ROULEAU, as Clerk of Court
By ____ Deputy Clerk of the Court — ____ Municipal Judge

FORFEITURE SET ASIDE this ____ day of ____, A. D. 19____ for good and proper cause shown.
DEFENDANT ARRAIGNED FOR TRIAL on the 25 day of JAN, A. D. 19 71 and Defendant entered a PLEA of Not Guilty to the charge. THE COURT having heard and duly considered the evidence, finds the said Defendant is Guilty of said charge; and IT IS HEREBY ORDERED AND ADJUDGED that the said Defendant is Guilty of said charge and IT IS THE SENTENCE OF THE COURT that said Defendant pay a FINE OF $ 500 and $ 10 COURT COSTS and in default of such payment stand committed to JAIL of said CITY for a TERM of 6 mo days. IT IS FURTHER ORDERED AND ADJUDGED that said Defendant be committed to JAIL of said City for a TERM of ____ days. IT IS FURTHER ORDERED AND ADJUDGED that ____ of above SENTENCE shall be suspended on condition ____
MOTION TO QUASH ____ STAY OF EXECUTION GRANTED until __/__/__
MOTION TO SUPPRESS THE EVIDENCE FOR UNREASONABLE SEARCH AND/OR SEIZURE ____
MOTION FOR DIRECTED VERDICT ____ ISSUE BENCH WARRANT, SET BOND AT $ ____
MOTION FOR NEW TRIAL ____ SUPERSEDEAS BOND SET AT $ 250 NS
NOLLE PROSSED ____ this ____ day of ____, A.D. 19____ JOSEPH A. WANICK, City Attorney
By: ____ Assistant City Attorney
REMARKS: Stay of 7 days

DONE, ORDERED AND ADJUDGED IN OPEN COURT AT MIAMI BEACH, DADE COUNTY, FLORIDA, this 25 day of JAN, A. D. 1971
ATTEST: RUTH B. ROULEAU, as Clerk of Court
By: J. Wayne Bethea — Deputy Clerk of the Court — Nelson Sweet — Municipal Judge
CASE REOPENED __/__/__ and balance of sentence suspended on condition ____
CASE REOPENED __/__/__ and condition of sentence is hereby changed to ____
Counsel for Defendant ____ Court Recorder ____
Case continued until 1-28 at 11:00 AM in my Office, 1 Arthur Godfrey Rd.

DEFENDANT WAIVED RIGHT TO A PUBLIC DEFENDER OR A PRIVATE ATTORNEY this ____ day of ____ A.D. 19____

PAGE BOUND VERTICAL

I, RUTH B. ROULEAU, Clerk of the Municipal Court of Miami Beach, Florida, do hereby certify that the above and foregoing is a true and correct copy of the original thereof on file in this office.

WITNESS my hand and the seal of said City this 25th day of October A.D. 19 77.

RUTH B. ROULEAU
Clerk of the Municipal Court of the City of Miami Beach, Florida.

By [illegible]
Deputy Clerk of the Municipal Court of the City of Miami Beach, Florida

GE BOUND VERTICAL

App. 3

(Cont'd. from front)
Hotel, and owned and operated by the 7450 Operating Company, one of whose principal owners and officers is the above-named person.

I, RUTH B. ROULEAU, Clerk of the Municipal Court of Miami Beach, Florida, do hereby certify that the above and foregoing is a true and correct copy of the original thereof on file in this office.
WITNESS my hand and the seal of said City this 16 day of April A.D. 19 77

RUTH B. ROULEAU
Clerk of the Municipal Court of the City of Miami Beach, Florida
by [illegible]
Deputy Clerk of the Municipal Court of the City of Miami Beach, Florida

2

3-A

PAGE BOUND VERTICAL

App. 5

IN THE MUNICIPAL COURT IN AND FOR THE CITY OF MIAMI BEACH, DADE COUNTY, FLORIDA — TRIAL DOCKET CASE

№ 143914 APP. B

THE STATE OF FLORIDA,
COUNTY OF DADE,
CITY OF MIAMI BEACH,
PLAINTIFF,
vs.
BASKIN, Meyer Albert
DEFENDANT

THE DEFENDANT Meyer Albert BASKIN
DID ON THE 12th DAY OF October, A. D. 19 70,
AT AND IN THE CITY OF MIAMI BEACH, DADE COUNTY, FLORIDA, VIOLATE SECTION 14-73
OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, which adopted the Metropolitan Dade County Minimum Standards Fire Prevention and Safety Code and did then and there violate Section 37.04 of said Metropolitan Fire Code. TO WIT: By failure to enclose an interior stairway or to protect the floor openings of said stairway in a proper and safe manner in a building located at 7450 Ocean Terrace, Miami Beach, Dade County, (Cont'd. on back)

COMPLAINANT William Beatty, M.B. Fire Dept. ARRESTED BY

DEFENDANT CALLED FOR TRIAL at _____ on the _____ day of _____, A.D. 19__ and not answering or appearing, IT IS THEREFORE ORDERED AND ADJUDGED that the Bond of said Defendant be and it is HEREBY FORFEITED.

DONE, ORDERED AND ADJUDGED IN OPEN COURT AT MIAMI BEACH, DADE COUNTY, FLORIDA, this _____ day of _____, A. D. 19__

ATTEST: RUTH B. ROULEAU, as Clerk of Court
By _____ Deputy Clerk of the Court _____ Municipal Judge

FORFEITURE SET ASIDE this _____ day of _____, A. D. 19__ for good and proper cause shown.

DEFENDANT ARRAIGNED FOR TRIAL on the 28 day of JAN, A. D. 1971 and Defendant entered a PLEA of not Guilty to the charge. THE COURT having heard and duly considered the evidence, finds the said Defendant is Guilty of said charge; and IT IS HEREBY ORDERED AND ADJUDGED that the said Defendant is Guilty of said charge and IT IS THE SENTENCE OF THE COURT that said Defendant pay a FINE OF $ 500 and $ 10 COURT COSTS and in default of such payment stand committed to JAIL of said CITY for a TERM of 60 days. IT IS FURTHER ORDERED AND ADJUDGED that said Defendant be committed to JAIL of said City for a TERM of _____ days. IT IS FURTHER ORDERED AND ADJUDGED that _____ of above SENTENCE shall be suspended on condition _____

MOTION TO QUASH _____ / / STAY OF EXECUTION GRANTED until / /

MOTION TO SUPPRESS THE EVIDENCE FOR UNREASONABLE SEARCH AND/OR SEIZURE _____

MOTION FOR DIRECTED VERDICT _____ ISSUE BENCH WARRANT, SET BOND AT $ _____

MOTION FOR NEW TRIAL _____ / / SUPERSEDEAS BOND SET AT $ 750 N.S.

NOLLE PROSSED _____ this _____ day of _____, A.D. 19__ JOSEPH A. WANICK, City Attorney
By: _____ Assistant City Attorney

REMARKS: Stay of 7 days

DONE, ORDERED AND ADJUDGED IN OPEN COURT AT MIAMI BEACH, DADE COUNTY, FLORIDA, this 28 day of JAN, A. D. 1971

ATTEST: RUTH B. ROULEAU, as Clerk of Court
By: J. Wayne Kehring Deputy Clerk of the Court — Nelson Smith Municipal Judge

CASE REOPENED / / and balance of sentence suspended on condition _____

CASE REOPENED / / and condition of sentence is hereby changed to _____

Counsel for Defendant _____ Court Recorder _____

Case continued until 11-05 ~~[illegible]~~ 1-28

TDS 10-29 AM 11-19-AM 12-03 AM 1-07-71-PM 1:05 PM

C# 279338
BOND ORDERED RELEASED
_____ day of _____ 19__
_____ Municipal Judge

BOND $ _____
CASH # _____
SURETY # _____
_____ Bondsman
SUMMONS XX to appear
"OR" ☐
AUTHORITY _____
FINE $ _____
COSTS $ _____
FORFEITURE $ _____
JAIL ☐ ☐
DISMISSED ☐ ☐
NOT GUILTY ☐ ☐
NOLLE PROSSE ☐ ☐
SUSPENDED ☐ ☐

DEFENDANT WAIVED RIGHT TO A PUBLIC DEFENDER OR A PRIVATE ATTORNEY
this _____ day of _____ A.D. 19__

PAGE BOUND VERTICAL

I, RUTH B. ROULEAU, Clerk of the Municipal Court of Miami Beach, Florida, do hereby certify that the above and foregoing is a true and correct copy of the original thereof on file in this office.

WITNESS my hand and the seal of said City this 2 day of December A. D. 19 71

RUTH B. ROULEAU
Clerk of the Municipal Court of the City of Miami Beach, Florida

by [illegible]
Deputy Clerk of the Municipal Court of the City of Miami Beach, Florida

PAGE BOUND VERTICAL

PAGE BOUND VERTICAL

(Cont'd. from front)
Florida, known as the Broadmoor Hotel, and owned and operated by the 7450 Operating Company, one of whose principal owners and officers is the above-named person.

I, RUTH B. ROULEAU, Clerk of the Municipal Court of Miami Beach, Florida, do hereby certify that the above and foregoing is a true and correct copy of the original thereof on file in this office.

WITNESS my hand and the seal of said City this 10th day of April A. D. 19 71.

RUTH B. ROULEAU
Clerk of the Municipal Court of the City of Miami Beach, Florida.

by J. Wayne Hetting
Deputy Clerk of the Municipal Court of the City of Miami Beach, Florida

4

U-A

APPENDIX C

IN THE MUNICIPAL COURT
OF THE CITY OF MIAMI BEACH
DADE COUNTY, FLORIDA

Case No.: 143913

CITY OF MIAMI BEACH, a Municipal Corporation in the State of Florida,

Plaintiff,

vs.

LEONARD D. BASKIN,

Defendant.

[Filed January 19, 1971]

MOTION TO DISQUALIFY

Defendant, by and through his undersigned attorney, moves to disqualify the judge assigned to the above entitled cause and all other judges of this Court similarly situate upon the following grounds:

1. The Charter of the City of Miami Beach, §8, provides, inter alia as follows:

". . . The city council shall appoint a city manager, a city attorney, a municipal judge and two associate municipal judges, who shall serve at the will of a majority of the council. . . ."

2. The aforesaid indeterminate term of the judge in this cause precludes any independent judicial decision by said judge wherein the principal issues to be adjudged are the official actions of the legislative body at whose will he serves.

3. Such provision for judicial duties to be performed at the will of this legislature on its face is unconstitutional in that it violates the separation of powers, i.e. branches, of government as delineated in the United States Constitution, Articles I, II and III and the Florida Constitution, Articles III, IV and V.

/s/ Leonard D. Baskin

LEONARD D. BASKIN,
Attorney for Defendant

AFFIDAVIT

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

Before me, the undersigned authority, personally appeared LEONARD D. BASKIN, who being first duly cautioned and sworn, deposes and says that he prepared the foregoing MOTION TO DISQUALIFY and that all the material facts contained therein are true and correct.

/s/ Leonard D. Baskin

Leonard D. Baskin

SWORN TO AND SUBSCRIBED BEFORE ME THIS 18th DAY OF JANUARY, 1971

(SEAL)

/s/ Shirley I. Friedman

NOTARY PUBLIC STATE OF FLORIDA AT LARGE

MY COMMISSION EXPIRES APRIL 15, 1974. BONDED THRU MAYNARD BONDING AGENCY

(Certificate of Service omitted in printing)

APPENDIX D

IN THE MUNICIPAL COURT
OF THE CITY OF MIAMI BEACH
DADE COUNTY, FLORIDA

Case No.: 143914

CITY OF MIAMI BEACH, a Municipal Corporation in the State of Florida,

Plaintiff,

vs.

MEYER A. BASKIN,

Defendant.

[Filed January 19, 1971]

MOTION TO DISQUALIFY

Defendant, by and through his undersigned attorney, moves to disqualify the judge assigned to the above entitled cause and all other judges of this Court similarly situate upon the following grounds:

1. The Charter of the City of Miami Beach, §8, provides, inter alia as follows:

> ". . . The city council shall appoint a city manager, a city attorney, a municipal judge and two associate municipal judges, who shall serve at the will of a majority of the council. . . ."

2. The aforesaid indeterminate term of the judge in this cause precludes any independent judicial decision by said judge wherein the principal issues to be adjudged are the offical actions of the legislative body at whose will he serves.

3. Such provision for judicial duties to be performed at the will of this legislature on its face is unconstitutional in that it violates the separation of powers, i.e. branches, of government as delineated in the United States Constitution, Articles I, II and III and the Florida Constitution, Articles III, IV and V.

/s/ Leonard D. Baskin

LEONARD D. BASKIN,
Attorney for Defendant

AFFIDAVIT

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

Before me, the undersigned authority, personally appeared LEONARD D. BASKIN, who being first duly cautioned and sworn, deposes and says that he prepared the foregoing MOTION TO DISQUALIFY and that all the material facts contained therein are true and correct.

/s/ Leonard D. Baskin
LEONARD D. BASKIN

SWORN TO AND SUBSCRIBED BEFORE ME THIS 18th DAY OF JANUARY, 1971

(SEAL)

/s/ Shirley I. Friedman

NOTARY PUBLIC STATE OF FLORIDA AT LARGE. MY COMMISSION EXPIRES APRIL 13, 1974. BONDED THRU MAYNARD BONDING AGENCY.

(Certificate of Service omitted in printing)

APPENDIX E

IN THE MUNICIPAL COURT
OF THE CITY OF MIAMI BEACH,
DADE COUNTY, FLORIDA

Case No.: 143913

CITY OF MIAMI BEACH, a Municipal Corporation in the State of Florida,

Plaintiff,

vs.

LEONARD D. BASKIN,

Defendant.

[Filed January 19, 1971]

MOTION TO DISMISS

Defendant, by and through his undersigned attorney, moves to dismiss the above entitled cause upon the following grounds:

1. There are no material disputed facts and the undisputed facts do not establish a prima facia case of guilt against the Defendant.

(a) The Summons to appear served upon the Defendant on October 21, 1970, states upon its face that the property in violation of the Section 14-73 of the Code of the City of Miami Beach is owned and operated by 7450 OPERATING COMPANY.

(b) 7450 OPERATING COMPANY is a Florida corporation doing business as the Broadmoor Hotel and registered in Dade County, Florida, under the Fictitious Name Statute.

(c) 7450 OPERATING COMPANY is the sole owner in fee simple of the property claimed to be in violation of said Ordinance as of January 2, 1964, by Warranty Deed record in O.R. Book 4002 at Page 100 of the Public Records of Dade County, Florida.

(d) The Defendant is an officer, director, and stockholder of 7450 OPERATING COMPANY, but does not own said Company or property alleged to be in violation of the City Code.

2. Plaintiff has failed to join an indispensable party to this suit, i.e. 7450 OPERATING COMPANY the sole fee owner of the subject property, and no service has been made upon said 7450 OPERATING COMPANY in accordance with law.

3. Section 14-73 of the Code of the City of Miami Beach is unconstitutional in that it is violative of the guarantees of due process of law and equal protection of the laws contained in the Constitution of the United States, Amendments V and XIV and the Constitution of Florida, D.R. §2 and §9, to wit:

(a) The Metropolitan Dade County Fire Prevention and Safety Code, as adopted by the aforesaid Sections 14-73 is so broad and all encompassing in its intent and application to existing property as to, in effect, grant full and complete license and power forcing owners of private

property to change, restrict or stop entirely usual and customary use of said property for ordinary business uses to which said property was designed, built and purchased. Further this unbridled power is given to persons unnamed and unknown, without restriction of any kind. For example, inter alia it provides:

"1.01 Intent of this Code.

> . . . In those cases not specifically covered by this code, compliance with published standards of the National Fire Protection Association, or other approved nationally recognized safety standards, shall be deemed to be prima facia evidence of compliance with this intent."

"1.02 Application to new and existing conditions.

> (1) The provisions of this Code shall apply equally to new and existing conditions except that existing conditions not in strict compliance with the terms of this Code shall be permitted to continue where the exceptions do not constitute a distinct hazard to life or property."

(b) The aforesaid quoted sections 1.01 and 1.02, are so broad and all encompassing as to cover all property and activity known to man and in themselves contradict the apparent or implied limits contained in the remaining sections of the Code, totalling approximately two-hundred pages and by reference the entire South Florida Building Code of some four hundred fifty pages.

(c) Metropolitan Dade County, in recognition of this overly broad and all encompassing scope, has provided in a separate section of its Fire Code, Section 14-46, for administrative procedure through an Appeals Board, to attempt some form of reasonable enforcement. The City of Miami Beach Code has no such provision for administrative procedure.

4. Section 14-73 of the City of Miami Beach Code is, in effect, as to existing buildings and ex post facto statute and, therefore, unconstitutional in that it violates the United States Constitution, Article I, Section 9 and the Florida Constitution, D.R. Section 10, which specifically prohibit such laws.

5. Sec. 14-73 of the City of Miami Beach Code in its effect upon existing property rights and the use of said property in the City of Miami Beach is, in effect, a zoning ordinance under guise of the police power. As such, it is invalid, null and void in that its passage did not meet the requirements of notice to property owners etc. provided in the City of Miami Beach Charter and related laws, Article VI, Zoning Enabling Act, particularly Sections 31 and 32.

6. Sec. 14-73 of the Code of the City of Miami Beach, as presently being enforced by said City is unconstitutional in that said enforcement is and has been arbitrary, discriminatory, unreasonable, haphazard and without proper view to the objectives sought, i.e. safety to life, which, of necessity, must be present to make said Code operative under the Police Powers. The enforcement against the defendants, in effect, amounts to deprivation of property without due process of law, denial to them of equal pro-

tection of the laws as guaranteed by the United States Constitution. Amendments V and XIV and the Florida Constitution, D. R. Sections 2 and 9.

/s Leonard D. Baskin

LEONARD D. BASKIN
Attorney for Defendant

AFFIDAVIT

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

Before me, the undersigned authority, personally appeared LEONARD D. BASKIN, who being first duly cautioned and sworn, deposes and says that he prepared the foregoing MOTION TO DISMISS and that all the material facts contained therein are true and correct.

/s/ Leonard D. Baskin

LEONARD D. BASKIN

SWORN TO AND SUBSCRIBED BEFORE ME THIS 18th DAY OF JANUARY, 1971.

(SEAL)

/s/ Shirley J. Friedman

NOTARY PUBLIC STATE OF FLORIDA AT LARGE. MY COMMISSION EXPIRES APRIL 15, 1974. BONDED THRU MAYNARD BONDING AGENCY.

(Certificate of Service omitted in printing)

APPENDIX F

SAME AS APPENDIX E

(Motion to Dismiss, identical in words, figures and form was simultaneously filed January 19, 1971 on behalf of Defendant Meyer A. Baskin.)

* * *

APPENDIX G

IN THE MUNICIPAL COURT
OF THE CITY OF MIAMI BEACH, FLORIDA

(Title omitted in printing)

(Excerpt from trial testimony on January 25, 1971)

* * *

THE COURT: If you are trying to raise an objection to the constitutionality of this Ordinance, you are wasting your time. To preserve the record, I will not rule and I will not find that the Ordinance is unconstitutional and you can argue all you want about the various phases of it up in the Appellate Court, but when you are starting to ask if Captain Haber here can give his opinion as to whether or not any section, presiding section to which we are presently referring, deals with other than the prevention of the loss of life or property, you are just wasting your time and you are wasting the Court's time. You will have an opportunity to attack this Ordinance all you want in the Appellate Court. I can tell you right now that I am not going to rule on the constitutionality of it.

* * *

THE COURT: I am not going to rule or declare on the constitutionality of this Code. I don't think that it is within the province of this Court to do so.

* * *

APPENDIX H

IN THE MUNICIPAL COURT
OF THE CITY OF MIAMI BEACH, FLORIDA

(Title omitted in printing)

(Excerpt from trial record on January 28, 1971)

* * *

MR. BASKIN: I would like, before you make your ruling, your Honor, to resubmit to the Court all motions that were pre-submitted, filed on all counts, that is, the Motion to Dismiss, to disqualify and dismiss this Court—

THE COURT: I will deny all motions as filed in this Charge. I find that there is no discrimination showing on the part of the City in the enforcement of this ordinance.

I find the ordinance to be valid. I find that there has not been compliance. I find that notice has been given in many cases by the Fire Department, which requires compliance.

The defendants have failed to comply and, therefore, are in violation of this ordinance and guilty as charged.

Now, I am not particularly interested in punishing anybody in this particular type of case, but I am interested in getting compliance.

This uncontroverted testimony does constitute a very serious hazard to the property and to the people, the

guests who might be staying at the hotel. I am asking, is it your intention to comply or exhaust your judicial remedies?

MR. BASKIN: It is my intention to appeal this case.

THE COURT: All right.

MR. BASKIN: If I am to be penalized for appealing this case upon what I consider, with all respect to your Honor's ruling, proper and just grounds, and I have been instructed by the Circuit Court — that is the only reason that I appeared here, because I did not feel that this was the tribunal, that this was not the proper way to contest the constitutionality of the statute. If your Honor sees fit to penalize me for those actions—

THE COURT: I am not penalizing you for the action of contesting the constitutionality of the ordinance. I made myself quite clear, and, in any event, I think that such a ruling would be of little effect. I am very much concerned with the uncontroverted testimony of this condition that exists in your building, is hazardous to life and property.

MR. BASKIN: The transcript will have to speak for itself. I believe your Honor ruled out all testimony outside of particular property involvement.

THE COURT: It is your prerogative, sir, to take an appeal. I am finding you guilty, and I assess a fine of $500 and $10 in court costs, or serve 60 days.

MR. BASKIN: Would your Honor set supersedeas bond?

THE COURT: In the amount of $750 in each case as supersedeas bond.

• • •

APPENDIX I

IN THE MUNICIPAL COURT
OF THE CITY OF MIAMI BEACH, FLORIDA

Case Nos. 143913 & 143914

(CONSOLIDATED BY THE COURT
FOR ALL PURPOSES)

(Title omitted in printing)

[Filed February 3, 1971]

MOTION FOR NEW TRIAL

Defendants, LEONARD D. BASKIN and MEYER A. BASKIN, as officers and directors of 7450 OPERATING COMPANY, pursuant to Rule 1.590 of the Florida Rules of Criminal Procedure, governing per the directions of this Court, file Motion for New Trial and state:

1. The verdict is contrary to law.

2. The verdict is contrary to the weight of the evidence.

3. The Court erred in denying defendants' Motion to Disqualify.

4. The Court erred in denying defendants' Motion to Dismiss.

5. The Court erred in sustaining plaintiff-City's objections to all defendants questions concerning or leading to the issue of constitutionality of the entire Metropolitan Dade County Fire Prevention and Safety Code, as adopted by the City of Miami Beach, §14-73, Transcript of Testimony, Pages 29-32 and 35-41.

6. Defendants did not receive a fair and impartial trial in that the Court refused to consider the constitutionality of the Ordinance, §14-73, of the Code of the City of Miami Beach, Transcript of Testimony, Pages 46 thru 48.

7. Defendants were deprived of their constitutional rights under the Constitution of United States, Article I, §9 and Amendments V and XIV and the Constitution of the State of Florida, 1968 Revision, D.R. §2, 9 and 10.

/s/ Leonard D. Baskin

LEONARD D. BASKIN,
Attorney for Defendants

(Certificate of Service omitted in printing)

APPENDIX J

IN THE MUNICIPAL COURT
OF THE CITY OF MIAMI BEACH, FLORIDA

Case Nos. 143913 & 143914

(CONSOLIDATED BY THE COURT
FOR ALL PURPOSES)

CITY OF MIAMI BEACH,

Plaintiff,

vs.

LEONARD D. BASKIN & MEYER A. BASKIN,
as Officers and Directors of 7450
OPERATING COMPANY,

Defendants.

[Filed February 4, 1971]

ORDER ON POST TRIAL MOTIONS

THIS CAUSE came on to be heard upon Defendants' Motions for New Trial, Arrest of Judgment and Correction and Reduction of Sentences; and the Court having examined the pleadings, testimony and evidence herein; heard argument of counsel; it is, thereupon

ORDERED and ADJUDGED as follows:

1. Defendants Motions for New Trial and Arrest of Judgment be, and the same are hereby denied.

2. Defendants' Motion for Correction and Reduction of Sentences be, and the same is hereby allowed. The fine against each defendant is hereby corrected to be in the amount of or sixty days in jail.

DONE and ORDERED in Open Court at Miami Beach, Florida, this 4th day of February, 1971.

/s/ Signature illegible

MUNICIPAL COURT

(Paragraph 2 above was deleted with pen and ink by the municipal judge upon entry of the order.)

APPENDIX K

IN THE MUNICIPAL COURT
OF THE CITY OF MIAMI BEACH, FLORIDA

(Title omitted in printing)

[Filed February 25, 1971]

(Paragraphs 2, 4, 7, and 17 omitted in printing)

ASSIGNMENTS OF ERROR

Defendants LEONARD D. BASKIN and MEYER A. BASKIN hereby assign as error in their appeal to the Circuit Court of the 11th Judicial Circuit the following judicial acts:

1. The Court erred in entering adjudication and sentence on January 28, 1971.

8. The Court erred in denying defendants' Motion to Dismiss.

5. The Court erred in entering adjudication and sentence based upon violation of an unconstitutional ordinance, thereby depriving defendants of rights to equal protection and due process of law under the Constitution of the State of Florida, D.R. §§2 & 9 and of the Constitution of the United States, Amendment XIV.

6. The Court erred in entering adjudication and sentence based upon an unconstitutional ordinance unconstitutionally applied and enforced.

8. The Court erred in denying defendants' Motion to Disqualify.

9. The Court erred in refusing to consider the constitutionality of the ordinance allegedly violated.

10. The Court erred in refusing to hold that the alleged ordinance broad and all encompassing as as to constitute an unlawful delegation of legislative authority.

11. The Court erred in refusing to hold the alleged ordinance unconstitutional by reason of being so vague and indefinite as to be invidiously discriminatory.

12. The Court erred in refusing to admit testimony disclosing the basis for the standards used in enforcing the ordinance allegedly violated.

13. The Court erred in refusing to admit testimony concerning the enforcement and application of this ordinance with regard to other buildings similarly situated.

14. The Court erred in refusing to admit testimony disclosing discriminatory application and enforcement.

15. The Court erred in entering adjudication and sentence based upon testimony that feasibility in conforming to the ordinance was not taken into consideration.

16. The Court erred in denying defendants' Motion for New Trial.

/s/ Leonard D. Baskin

LEONARD D. BASKIN
Attorney for Defendants

APPENDIX L

[Filed Jan. 17, 1972]

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA

CRIMINAL APPEAL NO. 7512

LEONARD D. BASKIN and MEYER A. BASKIN,
as Officers and Directors of 7450 Operating Company,
Appellants,

vs.

CITY OF MIAMI BEACH, a Florida
municipal corporation,
Appellee.

[Recorded 18th day of January, A.D. 1972]

ORDER AFFIRMING JUDGMENT

This is an appeal from a conviction in the Municipal Court of the City of Miami Beach of a violation of the Metropolitan Dade County Fire Prevention and Safety Code, adopted as a City ordinance.

The Court has carefully reviewed the transcript of testimony, the exhibits, the briefs of counsel and has considered the oral argument of counsel for the respective parties.

The Court finds

1. Municipal courts throughout the State have been duly and constitutionally authorized.

2. The Defendants below were properly brought before the lower tribunal.

3. The Municipal Fire Code under which the City of Miami Beach operates is constitutional.

Therefore, there being no reversible error, the Judgment appealed from is hereby affirmed.

DONE AND ORDERED at Miami, Dade County, Florida this 17 day of January, 1972.

/s/ Rhea Pincus Grossman

Circuit Judge

Copies of above Order were mailed to attorneys of record on the date of entry thereof.

By [signature illegible]

APPENDIX M

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA

CRIMINAL APPEAL NO. 7512

(Filed January 31, 1972)

LEONARD D. BASKIN and MEYER A. BASKIN,
as Officers and Directors of 7450 Operating Company,
Appellants,

vs.

CITY OF MIAMI BEACH,
a Florida municipal corporation,
Appellee.

(Certificate of Service and paragraphs 2, 3, & 6 omitted in printing)

PETITION FOR REHEARING

Appellants respectfully petition this Court to set aside its opinion and decision filed January 17, 1972, affirming the judgment of the trial court, and to rehear this cause on the following grounds:

1. The Court overlooked or failed to consider the distinction between the word "judge" and "court" implicit in Appellants' appeal, Points I and II. The constitutional

challenge on appeal to this Court was directed to the trial judge's tenure at the will of the city council and not to the authorization of the Court itself.

4. The Court overlooked or failed to consider the rulings, orders and opinions of the trial court which, in effect, denied Appellants' right to offer evidence showing unlawful delegation of legislative authority and discriminatory enforcement of the Fire Code of the City of Miami Beach.

5. The Court overlooked or failed to consider that the trial court erred in refusing to permit testimony relating to discriminatory enforcement and legislative delegation of powers and in stating that it was not going to rule on the constitutionality of the Code.

* * *

APPENDIX N

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA

(Filed Feb. 1, 1972)

(Title Omitted in printing)

(Certificate of Service and paragraph 7 omitted in printing)

AMENDED PETITION FOR REHEARING

Appellants respectfully amend their Petition for Rehearing filed in the above entitled cause on January 31, 1972, by adding the following grounds to those already stated therein.

8. The Court overlooked or failed to consider that the trial court denied appellants procedural and substantive due process of law as required by the Florida Constitution, D.R. 9, and the United States Constitution, Amendment XIV, when it denied appellants' offers of testimony concerning constitutionality of the Fire Code, and then on its own initiative elicited only such testimony on the constitutional issue as would uphold legality of the Code.

WHEREFORE, appellants pray this Court will grant Rehearing in the above entitled cause and reverse the judgment of the trial court, or, in the alternative, modify its opinion per Paragraphs A and B of the Petition for Rehearing heretofore filed herein.

Respectfully submitted,

/s/ Leonard D. Baskin

Leonard D. Baskin

* * *

APPENDIX O

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA

CRIMINAL APPEAL NO. 7512

LEONARD D. BASKIN and MEYER A. BASKIN, as Officers and Directors of 7450 Operating Company,
Appellants,

v.

CITY OF MIAMI BEACH,
a Florida municipal corporation,
Appellee.

[Filed for Record Feb. 11, 1972.]

ORDER DENYING AMENDED PETITION FOR REHEARING AND ALLOWING MODIFICATION OF SUPERSEDEAS

This cause was before the Court upon Appellants' Amended Petition for Rehearing and Motion for Stay of

Mandate. The Court having examined the pleadings, heard argument of counsel, and being otherwise duly advised, finds that Appellants have presently on deposit in the registry of this Court $1,500.00 bond on appeal and have filed Notice of intention to exhaust their appellate remedies. It is therefore, upon due consideration,

ORDERED AND DECREED That:

1. Appellants' Amended Petition for Rehearing be and the same is hereby denied;

2. Appellants shall have three (3) days to renew and modify their Appeal Bond in the cash sum of $1,500.00 presently in the registry of this Court to provide for and obligate them to diligently prosecute such further appellate remedies as provided by law;

3. Upon such renewal and modification, said cash bond shall act as supersedeas and stay all action by any person against Appellants or their property by reason of the Section of the City of Miami Beach Fire Code at issue herein.

DONE AND ORDERED in Chambers, at Miami, Florida, this 11 day of Feb., 1972.

/s/ Rhea Pincus Grossman

CIRCUIT JUDGE

APPENDIX P

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA THIRD DISTRICT

NO. 72-289

LEONARD D. BASKIN AND MEYER A. BASKIN, as Officers and Directors of 7450 Operating Company,
Petitioners,

vs.

CITY OF MIAMI BEACH,
a Florida municiapl corporation,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

TO THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, THIRD DISTRICT:

Petitioners LEONARD D. BASKIN AND MEYER A. BASKIN, as Officers and Directors of 7450 Operating Company, present this, their Petition For a Writ of Certiorari, and state:

1. Petitioners seek to have reviewed an appellate decision of the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida, dated the 17th day

of January, 1972, and filed in the records of said Circuit Court on the 18th day of January, 1972 in O.R. Book 7524, Page 250, and the Order denying rehearing, dated the 11th day of February, 1972, and filed in the records of said Circuit Court on the 11th day of February, 1972 in O.R. Book 7566, Page 29.

2. This Petition is presented under and pursuant to Article 5, §5(3) of the Florida Constitution and Rule 4.5c of the Florida Appellate Rules.

* * *

POINT I: Can a municipal judge, who serves at the will of the city council that appointed him, exercise the independent judicial discretion necessary to constitute an impartial tribunal within the clear mandate of the "separation of powers" doctrine, due process of law and equal protection of the laws guaranteed by the Florida Constitution, D.R. 2 and 9, Articles 2, 3, 4 and 5, and the United States Constitution, Articles 1, 2 and 3, Amendment XIV?

POINT II: Can there be a "fair trial" as defined by the due process and equal protection provisions of the Constitutions of the State of Florida, D.R. 2 and 9, and the United States, Amendment XIV, when the trial judge upholds the constitutionality of a city ordinance after stating in the trial record his intention to preclude all evidence to the contrary on the ground that the constitutional issue is not within the province of his court?

* * *

8. The Circuit Court, by failing to proceed according to the essential requirements of law and failing to accord constitutional due process to Petitioners, committed error so fundamental in character as to fatally affect its decision

and render it void. The controlling issue of "legislative courts," Point I supra, is of such fundamental import to the American system of government as to be of great public concern and interest. This constitutional issue is of first impression in the State of Florida. There are no reported decisions treating with the subject except in its parallel form of an "executive court," presently pending in the Supreme Court of the United States, Village of Monroeville v. Ward, 271 NE 2d 757 (1971): cert. granted United States Supreme Court, Jan. 19, 1972, 40 Law Week 3351.

• • •

/s/ Leonard D. Baskin

LEONARD D. BASKIN
Attorney for Petitioners
1642 A. I. DuPont Building
Miami, Florida 33131

(Affidavit and Certificate of Service omitted in printing)

APPENDIX Q

[Title omitted in printing]

MOTION TO STAY PROCEEDINGS

Petitioners respectfully request that the Court stay all further proceedings in the above entitled cause, pending decision by the Supreme Court of the United States in the case of Village of Monroeville v. Ward, 271 N. E. 2d 757 (Ohio 1971), cert. granted U. S. Sup. Ct., Jan. 19, 1972, 40 Law Week 3351, upon the following grounds:

1. The paramount issues involved in the Monroeville case and the case at bar are exactly obverse to each other. The two issues are opposite sides of the same triangle, the doctrine of "separation of powers." Monroeville questions the combination of executive and judicial. The case at bar places in issue the combination of legislative and judicial.

2. Decision by the United States Supreme Court in the aforesaid Monroeville case, while not controlling upon the case at bar, will certainly be of great persuasive force and assistance to this Court in reaching a decision in the instant case.

WHEREFORE, Petitioners pray that this Court will grant a stay of proceedings herein pending the decision of the Supreme Court in the Monroeville case; or in the alternative, stay these proceedings for a time sufficient to allow Petitioners to obtain specific information as to the exact nature of the issues involved in the Monroeville case.

Respectfully submitted,

/s/ Leonard D. Baskin

LEONARD D. BASKIN
Attorney for Petitioners
1642 A. I. DuPont Building
Miami, Florida 33131

(Certificate of Service omitted in printing)

APPENDIX B

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 1972
TUESDAY, APRIL 11, 1972

CASE NO. 72-289

LEONARD D. BASKIN and MEYER A.BASKIN,
as Officers and Directors of 7450 Operating Company,
Petitioners,

vs.

CITY OF MIAMI BEACH, a Florida
municipal corporation,
Respondent.

Upon consideration of petitioners' motion to stay proceedings, it is ordered that said motion is hereby denied.

Petitioners' motion to correct brief is granted as the designated corrections have been made.

A True Copy

ATTEST:

/s/ William Cant

Clerk District Court of
Appeal, Third District

(SEAL)

cc: Leonard D. Baskin
Lionel Barnet
/h

APPENDIX S

Not final until time expires to file rehearing petition and, if filed, disposed of.

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
THIRD DISTRICT

JANUARY TERM, A.D. 1972
WEDNESDAY, MAY 10, 1972

CASE NO. 72-289

LEONARD D. BASKIN AND MEYER A. BASKIN,
as Officers and Directors of 7450 Operating Company,
Petitioners,

vs.

CITY OF MIAMI BEACH, a Florida
municipal corporation,
Respondent.

This cause having heretofore been submitted to the Court on petition for writ of certiorari upon the transcript

of record and briefs to review the order of the Circuit Court for Dade County, (Criminal No. 7512) in said cause bearing date January 17, 1972, and the record having been considered, it is ordered that said petition be and the same is hereby denied.

A True Copy

ATTEST:

/s/ William L. Cant

Clerk District Court of
Appeal, Third District

(SEAL)

cc: Leonard D. Baskin
Lionel Barnet
Rhea P. Grossman
E. B. Leatherman
/ddh

APPENDIX T

(Title omitted in printing)

PETITION FOR REHEARING

Petitioners file Petition for Rehearing of the Order entered by this Court on May 10, 1972, and state:

A. The Circuit Court held that municipal courts throughout the State have been duly and constitutionally authorized, whereas appellants had challenged the ability of a municipal judge who serves at the will of the City Council appointing him to function as the independent judicial officer required by the Separation of Powers Doctrine of the Florida and Federal Constitutions. Appellants' challenge was predicated upon denial of due process of law, equal protection of law and fair trial.

B. The Circuit Court held that the Municipal Fire Code under which the City of Miami Beach operates is constitutional. In so doing, the Circuit Court as appellate court applied the wrong rule and departed from essential requirements of law. Appellants had contended they had been deprived of a fair trial, due process and equal protection of law by the trial court when it refused to admit evidence on the question of the constitutionality of the ordinance involved. This Court overlooked or failed to consider that appellants were thereby deprived of their day in court and were deprived of an opportunity to show the arbitrary, unconstitutional application of the ordinance involved to appellants. The decision of the appellate court was therefore an original ruling rather than an appellate ruling, without sufficient competent evidence to support it.

• • •

/s/ Leonard D. Baskin

LEONARD D. BASKIN
Attorney for Petitioners
1642 A. I. duPont Building
Miami, Florida 33131

(Certificate of Service omitted in printing)

APPENDIX U

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
THIRD DISTRICT

JANUARY TERM, A.D. 1972
TUESDAY, MAY 30, 1972

CASE NO. 72-289

LEONARD D. BASKIN and MEYER A. BASKIN, as officers and directors of 7450 Operating Company,
Petitioners,

vs.

CITY OF MIAMI BEACH, a Florida municipal corporation,
Respondent.

Upon consideration of petitioners' motion for stay of mandate and for stay of proceedings, it is ordered that said motion is granted for a stay of all proceedings for a period of 30 days, and if petition for writ of certiorari is filed in the U.S. Supreme Court within 30 days, the extension will continue until disposed of by the U.S. Supreme Court.

It is further ordered that petitioners' petition for rehearing is hereby denied.

A True Copy

ATTEST:

/s/ William L. Cant

Clerk District Court of
Appeal, Third District

(SEAL)

cc: Leonard D. Baskin
Lionel D. Barnet
E. B. Leatherman
/ddh

COPY

NOV 28 1972
MICHAEL RODAK, JR., CLERK

in the

Supreme Court

of the

United States

OCTOBER TERM, 1971

NO. 72-1

LEONARD D. BASKIN and MEYER A. BASKIN,
as Officers and Directors of 7450 Operating Company,
Petitioners,

vs.

CITY OF MIAMI BEACH,
a Florida Municipal Corporation,
Respondent.

BRIEF OF RESPONDENT CITY OF MIAMI BEACH

IRVING CYPEN, ESQ.,
Attorney for Respondent
825 Arthur Godfrey Road,
Miami Beach, Florida

Of Counsel:
JOSEPH A. WANICK,
CITY ATTORNEY
SHELDON R. ZILBERT,
ASSISTANT CITY ATTORNEY

MIAMI REVIEW — 371-4853 — 377-3721

TABLE OF CONTENTS

	Page
STATEMENT OF THE CASE	1
QUESTION PRESENTED	6
CONSTITUTIONAL PROVISIONS INVOLVED	6
REASONS FOR NOT GRANTING THE WRIT	7
CERTIFICATE OF SERVICE	14

TABLE OF CITATIONS

	Page
Sweezy v. New Hampshire, 354 U.S. 234	11
Tumey v. Ohio, 273 U.S. 510	11, 12
Ward v. Village of Monroeville, Ohio, — U.S. — No. 71-496	12

in the

Supreme Court

of the

United States

OCTOBER TERM, 1971

NO. _____

LEONARD D. BASKIN and MEYER A. BASKIN,
as Officers and Directors of 7450 Operating Company,
Petitioners,

vs.

CITY OF MIAMI BEACH,
a Florida Municipal Corporation,
Respondent.

BRIEF OF RESPONDENT CITY OF MIAMI BEACH

STATEMENT OF THE CASE

The Petitioners' statement of the case leaves something to be desired.

Accordingly, the following amplificatory narration is respectfully submitted:

The Petitioners, through their corporation, run and operate a hotel in the City of Miami Beach, Florida. The City of Miami Beach is located in Dade County, which possesses a Metropolitan form of Government which authorizes and empowers the County Commission to pass ordinances and regulations in specified sectors which govern the entire County, including incorporated municipalities situate therein.

This is true of such police power measures as the Uniform Metropolitan Fire Code, involved here, which is effective throughout Dade County regardless of the will of the municipality or municipalities affected, and the City Council of the City of Miami Beach is powerless to say "yea" or "nay" thereto.

The Petitioners were arrested for a violation of this Metropolitan Dade County Fire Code, the particular violation consisting of a "failure to enclose an interior stairway or to protect the floor openings of said stairway in a proper and safe manner in a building located at 7450 Ocean Terrace, Miami Beach, Dade County, Florida, known as the Broadmoor Hotel, and owned and operated by the 7450 Operating Company." (Appendix I of Petitioners Brief)

The Petitioners as officers of the Corporation were tried, and found guilty, by the Municipal Court of the City of Miami Beach, Florida.

The Municipal Judge really had no choice whatsoever but to find Petitioners guilty, because they stipulated in open court that they were in violation. Petitioners stated in open court as follows, before the Municipal Judge at the outset of the case:

"MR. BASKIN: Your Honor, I am sure that we can stipulate that I have not complied with, that the Company has not complied with the regulations."

It is true, as stated by Petitioners, that the Municipal Judge understandably made short shrift of the Petitioners' contention that he should disqualify himself because of the Petitioners' claim that he could not be impartial because he held office at the will of the City Council of the City of Miami Beach.

The record (Appendix H, page 20, Petitioner's Brief) thoroughly refutes Petitioners' claim that the Municipal Court did not pass, or refused to pass upon the issue of constitutionality. He did so, even though Petitioners themselves believed themselves to be in the wrong forum for a Constitutional Decision.

The following appears in the Transcript of Proceedings before the Trial Court (Appendix H, Petitioners' Brief):

This is what His Honor said:

"THE COURT: I will deny all motions as filed in this charge. I find that there is no discrimination showing on the part of the City in the enforcement of this ordinance."

"I find the ordinance to be valid. I find that there has not been compliance. I find that notice has been given in many cases by the Fire Department, which requires compliance."

"The Defendants have failed to comply and, therefore, are in violation of this ordinance and guilty as charged."

"This uncontroverted testimony does constitute a very serious hazard to the property and to the people, the guests who might be staying at the hotel. I am asking, is it your intention to comply or exhaust your judicial remedies?"

"MR. BASKIN: It is my intention to appeal this case."

"THE COURT: All right."

"MR. BASKIN: If I am to be penalized for appealing this case upon what I consider, with all respect to your Honor's ruling, proper and just grounds, and I have been instructed by the Circuit Court — that is **the only reason that I appeared here, because I did not feel that this was the tribunal, that this was not the proper way to contest the constitutionality of the statute.** If your Honor sees fit to penalize me for those actions —"

"THE COURT: I am not penalizing you for the action of contesting the constitutionality of the ordinance. I made quite clear, and, in any event, I think that such a ruling would be of little effect. I am very much concerned with the uncontroverted testimony of this condition that exists in your building, is hazardous to life and property."

"MR. BASKIN: The Transcript will have to speak for itself. I believe your Honor ruled out all testimony outside of particular property involvement."

"THE COURT: It is your prerogative, sir, to take an appeal." (All Emphasis added)

Petitioners' own Record transmitted here conclusively demonstrates that the constitutionality of the ordinance involved was passed upon, and held valid, not only by the Municipal Court, but also by the Circuit Court and by the Third District Court of Appeal.

It is respectfully submitted, therefore, that a fair phrasing of the question presented to this Honorable Court would be thus:

QUESTION PRESENTED

MUST A MUNICIPAL JUDGE WHO HOLDS OFFICE AT THE WILL OF A CITY COUNCIL BE CONCLUSIVELY PRESUMED TO BE INCAPABLE OF POSSESSING AND EXERCISING A MINIMAL MODICUM OF JUDICIAL POWER REQUISITE TO METE OUT "DUE PROCESS" JUSTICE IN HIS COURT?

CONSTITUTIONAL PROVISIONS INVOLVED

THE CONSTITUTION OF THE STATE OF FLORIDA, ADOPTED BY THE CONVENTION OF 1885

"SECTION 1. Courts. — The judicial power of the State of Florida is vested in a supreme court, district courts of appeal, circuit courts, Court of Record of Escambia County, criminal courts of record, county courts, county judge's courts, juvenile courts, courts of justices of the peace, and such other courts, including municipal courts, or commissions, as the legislature may from time to time ordain and establish."

THE CONSTITUTION OF THE STATE OF FLORIDA, 1968 REVISION

"ARTICLE §1. Courts:

The judicial power shall be vested in a supreme court, district courts of appeal, circuit courts and county courts. No other courts may be established by the state, any political subdivision or

any municipality. The legislature shall, by general law, divide the state into appellate court districts and judicial circuits following county lines. Commissions established by law, or administrative officers or bodies may be granted quasi-judicial power in matters connected with the functions of their offices."

ARTICLE V, Section 20:

"Municipal Courts shall continue with their same jurisdiction until amended or terminated in a manner prescribed by special or general law or ordinances, or until January 3, 1977, whichever occurs first. On that date all municipal Courts not previously abolished shall cease to exist. . ."

REASONS FOR NOT GRANTING THE WRIT

Reason, logic, custom and usage, history, experience and precedent constitute the impregnable phalanx which compels the denial of the Petition.

The question, as presented by the Petitioners, presupposes and accepts as undisputable gospel and as uncontrovertible as the law of The Medes and Persians, the postulate that a person who accepts the office of Municipal Judge and serves at the will of the City Council, must be conclusively deemed and presumed to be a mere sycophant and a spineless non-person.

This doctrine is unblushingly published by the Petitioners in these words (Page 9 of their Brief):

> "A Judge under such provision can have no true will of his own . . . his necessarily paramount interest in his job renders his judicial discretion no more than the 'alter ego' of the Legislature." (emphasis added)

They further assert, at the same page equally unblushingly, that:

> "because the Trial Judge served at the will of the Legislature . . . his impartiality (is precluded)"

These observations may fairly and honestly reflect the beliefs of the Petitioners. They are entitled to them.

However, the record discloses, not a pusillanimous abdication of judicial responsibility but a most laudable consecration and dedication to his oath of office, worthy of the highest traditions of the Bench. Petitioners' Record furnishes a forlorn and decrepit vehicle to transport here their lament.

The Record shows no judicial poltroonry. On the contrary it demonstrates the highest judicial rectitude comporting with hallowed traditions of the Bench.

Petitioners are imprecise as to just what their complaint is. Are they inveighing against the mode of selecting Municipal Judges, or against the fact that they serve at the will of the City Council?

Petitioners surely come late in the day with their strictures.

Even so, history, logic, pragmatis, and precedent are arrayed against them.

These Municipal Courts are traditionally closest to the people. Through good times and bad, in days of peace as well as in nights of turmoil, they mete out justice fairly, speedily, and with deep understanding and compassion.

If this were not so, the populace would have long ago rebelled, against the system.

If Petitioners are complaining that the City Council should not appoint Municipal Judges, they are entitled to their belief. However, even the people themselves have been known to elect Judges who turned out to be less than paragons of judicial excellence.

There is no perfect method of selecting judges, or any other public official. History demonstrates that an unsuitable public official can be dealt with appropriately on an ad hoc basis.

The presumptions are all against the jaundiced philosophy of the Petitioner. As a public officer, a Municipal Judge is required to, and does take an oath of office, swearing to uphold the laws, and the Constitutions of the United States.

The Record in this case is proof conclusive that the Municipal Judge was true to his oath, and that he administered the law and the justice of the cause with impeccable courtesy and learning. He demonstrated a

thorough and complete knowledge and utilization of the rules of decision and the decisions of the Courts in all regards.

He did pass on the constitutionality of Ordinance, and his judgment upholding the same was affirmed by two appellate courts, the Circuit Court and the Third District Court of Appeal.

Even if the Petitioners were right in claiming he did not, his claimed failure or refusal to meet and deal with the constitutional issue deprived petitioners of no due process.

Traditionally, these are grass-roots Courts. Many of them are presided over by laymen, there being no legal edict that they be learned in the law. It is quite conceivable that they should not be required to deal out constitutional decisions. It is equally conceivable that, if under a mandate to do so, their decisions could do incalculable harm to the common weal. Construing and interpreting the Constitution is no job for prattling babes. Even in the Federal Courts, we require three Judges to pass upon constitutional issues.

The law has long been settled that the failure or refusal of an inferior court to deal with a constitutional issue is not a deprivation of due process. 16 Corpus Juris Secundum, par. 93, pp. 303, 304. The text at page 305, states:

> ". . . It is considered the better practice for the (inferior) court to assume that (a statute) is constitutional until the contrary is declared by a court of appellate jurisdiction. . . "

It is to the credit of the Petitioners themselves that they conceded the Municipal Judge should not be required to pass upon their constitutional challenge.

Conversely, the charge that every Municipal Judge who holds office at the will (not whim) of the City Council must be conclusively deemed to be a groveling mendicant for continuance in office, is unworthy of them. If such "judges" there be, they, too, can be dealt with on an ad hoc basis. This charge is wholly bereft of anything in the Record to sustain it, and it does a great disservice not only to the Judge who so conscientiously presided in this case, but also to the City Council, which must be deemed to have selected him on the basis of his talents, abilities, and credentials for judicial office.

Petitioners neither have nor cite any authority or precedents for their thesis that they have been denied due process.

They refer to **Tumey v. Ohio**, 273 U.S., 510. The case is inapposite. That case correctly held that if a mayor sitting as a judge has a direct, personal and substantial financial interest and benefit in fines collected from a defendant, the latter is deprived of due process.

They also refer to **Sweezy v. New Hampshire**, 354 U.S. 234. Its relevancy here is surely arcane, it deals solely with the invasion of First Amendment freedoms by an Attorney General occupying dual functions in a prosecution for contempt. We have no quarrel with, and indeed profess hearty adherence to the views therein expressed.

Finally, Petitioners enthusiastically seize upon Ward v. Village of Monroeville, Ohio, ____ U.S. ____ No. 71-496, as tabula in naufragio. Here, it is indeed nothing more. This Honorable Court correctly held that the petitioner there was denied a trial before a disinterested and impartial judge, as required by due process, if that judge was the mayor of the municipality as well, and was responsible for village finances, and his court was relied upon as a vital source of village revenues.

This manifests, on the part of the petitioners, an ergoism beyond belief. Their logic runs thuswise: Though the salary of the Judge here is not related to fines imposed and collected, nonetheless his salary flows from his office, and if he does not please the Council, he will lose his position, therefore he must convict all defendants, thus depriving them of unbiased and impartial tribunal guaranteed them by the Constitution.

This somewhat involuted reasoning, if carried to logical extremities, would put an incalculable number of Judges out of employment.

That "logic", if followed, would not even save Judges with a term of office, because if the office is so dear, it continues its all-consuming desirability at the inception of the terms as well as during its continuance and impending termination.

We take the liberty of paraphrasing the opinion of the dissenting Justices, in Ward v. Village of Monroeville, supra, as follows:

The Municipal Judge in this case had no direct financial stake in its outcome. Therefore **Tumey v. Ohio** has no pertinency. To justify striking down the Charter of the City of Miami Beach, this High Court must assume either that their Municipal Judges will, in every case, disregard their oath and administer justice contrary to constitutional commands or that this will happen often enough to warrant the prophylactic **per se** rule urged by petitioners.

This Honorable Court can make neither assumption with respect to any City of Miami Beach Municipal Judge nor with respect to similar judges in an undetermined large number of other States. Hence, the due process matter to be decided should be done on a case-to-case basis, a question, from the posture of this case, which is not before this Honorable Court.

It is respectfully submitted that not even this High Court has a panacea for every remote, speculative, trivial and fanciful complaint or malady. There was no deprivation of due process here in even the most infinitestimal degree and the prayer of the petition should be denied.

Respectfully,

IRVING CYPEN
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that 3 true copies of the foregoing Brief of Respondent were delivered to LEONARD D. BASKIN, Alfred I. duPont Bldg., 169 East Flagler Street, Miami, Florida, this ____ day of November, 1972.

JOSEPH A. WANICK